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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	44257.830001	7735

7590 12/31/2002

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

3 M.

Office Action Summary	Application No. 09/701,057	Applicant(s) VON SPRECKELSEN ET AL.	
	Examiner Nathan J. Newhouse	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) 2-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Claims 2-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gach '618 in view of Graboski et al. '506.

Gach teaches a molded bottle 10, a cap and neck assembly 18 and a foil 56 located between them. The cap and neck assembly is heat sealed to the bottle neck 14 after the bottle has been filled. See col. 3, lines 28-47. Gach does not teach the bottle being made by extrusion blow molding to form a thin walled bottle and being non-gas tight.

Graboski et al. teaches a bottle that is made by extrusion blow molding. See column 2, lines 59-64. The resulting bottle has a thickness of 0.381mm(0.015 in.) to

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2.159mm(0.085 in.) and can be made of high density polyethylene, which is the same material as applicant's invention and is non-gas tight. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle of Gach by extrusion blow molding to form a "thin walled" bottle made of high density polyethylene as taught by Graboski et al. to provide a bottle which protects its contents from degradation from light.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gach '618 in view of Graboski et al. '506, as applied to claim 11 above, and further in view of Flanagan '568.

Gach, as modified above, does not teach the method of forming the method of forming the cap and neck assembly by injection molding.

Flanagan teaches a similar cap and neck assembly to what is taught by Gach. Flanagan further teaches that this cap and neck assembly is made by injection molding. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cap and neck assembly of Gach by injection molding as taught by Flanagan, as this is a well known method of making caps.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gach '618 in view of Graboski et al. '506 and Flanagan '568 as applied to claim 12 above, and further in view of Kitahora et al '334.

Gach, as modified above, teaches everything except for the foil being sterilized before applying to the bottle.

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Kitahora et al. teaches a method of forming and closing a bottle. A perform is extrusion blow molded to form a bottle, the bottle is then filled, and the bottle is closed by a cap assembly with the cap assembly being sterilized prior to applying. It would have been obvious to one of ordinary skill in the art at the time the invention was made to sterilize the cap and neck assembly of Gach as taught by Kitahora et al., prior to applying the cap and neck assembly to the bottle, to remove any dirt, etc. from the cap to prevent contamination of the product in the bottle.

6. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gach '618 in view of Graboski et al. '506 and Flanagan '568 as applied to claim 12 above, and further in view of Kauffman et al. '680.

Gach, as modified above, teaches the bottle being made by extrusion blow molding, but does not teach the bottle being formed by rotary machine.

Kauffman et al. teaches bottles that are formed by a rotary extrusion blow molding method and apparatus. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle of Gach by a rotary extrusion blow molding as taught by Kauffman et al. as this is a well known method extrusion blow molding of bottles.

Response to Arguments

7. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc.,

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requests for copies of such papers or other general questions should be directed to

Tech Center 3700 Customer Service at (703) 306-5648, email

CustomerService3700@uspto.gov .


Any inquiry concerning the merits of the examination of the application from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov


Nathan J. Newhouse
Primary Examiner
Art Unit 3727

December 26, 2002